

INSTRUCTIONS FOR COMPLETING FTB NOTICE 2008-4 CLOSING AGREEMENT

This closing agreement (Agreement) is for use only by taxpayers participating in FTB Notice 2008-4, Resolution of Bogus Optional Basis (BOB) Transactions and Certain Employee Stock Ownership Plan (ESOP) Transactions. Please refer to FTB Notice 2008-4 for eligibility and filing requirements.

FTB Notice 2008-4 Closing Agreement must be completed in its entirety, including Schedules I, II, III, and their related attachments. Taxpayers who fail to file FTB Notice 2008-4 Closing Agreement and pay the tax, interest, and penalty (or apply for an acceptable payment arrangement) by September 12, 2008, are not eligible to participate and will be subject to all penalties otherwise applicable.

You may type information directly onto the electronic version of this Agreement, however, you cannot save the information. Once you have completed the Agreement, you will need to print it and mail it to the address listed below under "Where to File." Alternatively, you may print the Agreement, complete it, and mail it to the address listed below under "Where to File."

The Agreement is set up to accommodate 6 taxable years. If more than 6 years are involved, you will need to attach information on a separate page as required by the Agreement.

These instructions cover the paragraphs of the Agreement that require you to enter information. The language of the Agreement cannot be modified or changed, and modified or changed Agreements will not be accepted by FTB.

Who Should File

Each eligible taxpayer whose tax was reduced due to the transaction and who desires to participate in FTB Notice 2008-4 must file a separate FTB Notice 2008-4 Closing Agreement. A taxpayer who entered into more than one eligible transaction must file a separate Agreement for each transaction.

You may participate in FTB Notice 2008-4 even if not all of the participants in the Transaction file FTB Notice 2008-4 Closing Agreement. For example, if you are a shareholder in an S corporation that participated in an eligible transaction, you may file FTB Notice 2008-4 Closing Agreement regardless of whether the S corporation or any other shareholders file FTB Notice 2008-4 Closing Agreement. In this example, the S corporation and any other shareholders not filing an Agreement will continue to be subject to all penalties under the law.

Who Should Sign

Sign and date FTB Notice 2008-4 Closing Agreement on the appropriate lines under Execution of Agreement. If the eligible taxpayer filed a joint tax return, both taxpayers must sign the Agreement. If the eligible taxpayer filed an FTB Form 100, Schedule R-7, an officer

of the key corporation should sign the Agreement. Complete the Statement of Authorization if you are a corporate officer or authorized representative of the person who is entering into this Agreement.

Payment

Provide full payment of all taxes, penalties, and interest due in accordance with FTB Notice 2008-4 Closing Agreement or request a payment arrangement with FTB by September 12, 2008. FTB will not execute an Agreement absent payment in full or the presence of an acceptable payment arrangement.

If you are unable to pay the entire amount due, you may request a payment arrangement not to exceed 12 months. For information regarding a payment arrangement, please call Michelle Wallin at (916) 845-7363 (not a toll-free number).

Where to File

Send your completed FTB Notice 2008-4 Closing Agreement, including all schedules and attachments, to FTB by US Mail or private carrier.

If using the US Mail, please address as follows:

ATSU 398
O NAYEBKHIL MAIL STOP F385
FRANCHISE TAX BOARD
PO BOX 1673
SACRAMENTO CA 95812-9900

If using a private carrier, please address as follows:

ATTN O NAYEBKHIL EXT.#3190
ON ATSU 398 MAIL STOP F385
FRANCHISE TAX BOARD
SACRAMENTO CA 95827

Additional Information

For more information about FTB Notice 2008-4 Closing Agreement, refer to FTB Notice 2008-4 and the related frequently asked questions from our website at www.ftb.ca.gov.

You may also contact our FTB Notice 2008-4 Hotline at (916) 845-3030 or email your question to taxshelter@ftb.ca.gov.

Assistance for persons with disabilities

We comply with the Americans with Disabilities Act. Persons with hearing or speech impairments please call TTY/TDD (800) 822-6268.

Specific Instructions

FTB NOTICE 2008-4 CLOSING AGREEMENT

Enter your name and your Taxpayer Identification (TPID) number in the spaces in the first paragraph of the Agreement. TPID number may be your social security number (SSN), federal employer identification number (EIN), or California corporation number (CCN), as applicable. If you filed Schedule R-7, Election to File a Unitary Taxpayer's Group Return and List of Affiliated Corporations, use the key corporation's name and TPID as designated in the Schedule R-7. For taxpayers that are members of a unitary group that did not elect to file a group return, use the name of the entity that participated in the Transaction(s).

Paragraph A. Tax Returns Filed

Identify the taxable years included in the Agreement by completing the table provided. If the tax year has been amended, enter the form number for the amended returns and the date the amended return was filed. If the Agreement covers more than 6 taxable years, please provide information for the first 5 years on the table and on the 6th line, reference the attachment that contains the information for the other years.

Paragraph B.1. Check the appropriate box for the type of transaction.

Paragraph B.3. Complete the table for tax benefits claimed. Use one line per tax year. Attach a supporting schedule if you have several items to report for a single tax year or if the tax benefit was claimed on various line numbers and schedules. Failure to report all tax benefits will result in your Agreement being rejected or revoked under Paragraph 10.4.1. The amounts shown in this table should be the same as what is reported on Line 3 of Schedule III.

Paragraph B.4. Complete the table for transaction costs. Attach supporting schedules if you have several items to report for a single tax year or if the transaction costs were claimed on various line numbers and schedules.

Paragraph F. Pending Actions

If you have a pending action before the California State Board of Equalization, in superior court, or any other court, check the "are" box; otherwise check the "are no" box.

Paragraph G. FTB Notices

Check the appropriate box or boxes and enter the taxable years.

Paragraph 3. Tax

Check the method or methods of payment. If you are requesting a payment arrangement, then indicate "Installment Agreement" as your payment method. (See payment instructions above.)

Complete the table provided. Use one line per tax year. "Total Tax Per Return" is the amount you reported to FTB on an original or amended return for the tax year, or the amount as previously adjusted by FTB for other than the BOB or ESOP transaction(s). "Total Tax Per

Agreement" is the amount after adjustments for removal of BOB or ESOP tax benefits and transaction costs previously claimed on your tax return. "Additional Tax Per Agreement" is the difference between "Total Tax Per Return" and "Total Tax Per Agreement." The "Total Tax Per Return" amount should be the same as what is reported on Line 14 of Schedule III. The "Total Tax Per Agreement" amount should be the same as what is reported on Line 13 of Schedule III. The "Additional Tax Per Agreement" should be the same as what is reported on Line 15 of Schedule III.

Paragraph 4. Adjustment to the Basis of Assets

Complete the table provided. Use a separate row for each asset. "Date" is the date the asset basis was changed by the "Transaction". "Basis Per Transaction" is the basis as affected by the Transaction. "Basis Per Agreement" is the basis absent the Transaction.

Paragraph 5. Penalties

Check the method or methods of payment. If you are requesting a payment arrangement, then indicate "Installment Agreement" as your payment method. (See payment instructions above.)

Paragraph 5.1. FTB issued a Notice of Proposed Assessment (NPA) to Taxpayer for the Transaction(s) for the Taxable Years at Issue. Check this box if FTB issued an NPA for the Transaction for which the Agreement applies.

Paragraph 5.2. FTB has not issued a Notice of Proposed Assessment (NPA) to Taxpayer for the Transaction(s) for the Taxable Years at Issue. Check this box if FTB did not issue an NPA for the Transaction for which this Agreement applies.

Complete the table provided. Use one line per tax year. The "Penalty Amount" should be the same as what is reported on Line 16 of Schedule III. (See instructions for Line 16 of Schedule III below.)

Paragraph 6. Interest

Check the method or methods of payment. If you are requesting a payment arrangement, then indicate "Installment Agreement" as your payment method. (See payment instructions above.)

Complete the table provided. Use one line per tax year. Interest on "Additional Tax Per Agreement" is charged from the original due date of the return. If you checked the box in 5.1 above, interest on the "Penalty Amount" is charged from the date of the Notice of Proposed Assessment. If you checked the box in 5.2 above, interest on the "Penalty Amount" is charged from the original due date of the return. Interest is calculated up to the date your payment is received by FTB. For help with the interest amount or if you checked both the paragraph 5.1 and paragraph 5.2 boxes, you may call the FTB Notice 2008-4 Hotline at (916) 845-3030 for assistance with your interest computation. The "Interest Amount" should be the same as what is reported on Line 17 of Schedule III.

SCHEDULE I – DETAILED DESCRIPTION OF TRANSACTION

Check all boxes that apply. Attach a thorough description of the Transaction(s), including the enumerated items set forth in Schedule I.

Basis in Assets for BOB Transactions

Use a separate row for each asset. "Basis as Originally Reported" is the basis as affected by the Transaction. "Basis as Revised" is the basis absent the Transaction. "Date" is the date that the asset basis was changed by the Transaction.

Entities used to Facilitate the Transaction(s)

Include all entities that facilitated the Transaction(s) included in the Agreement. Use a separate row for each entity. "Party Name" may be a business name or an individual. Provide the EIN, SSN, or CCN if known or available to you. Provide the most recent address and telephone number if known or available to you. For each entity, list taxable years for which the entity filed a California tax return, if known or available to you.

Include individuals or entities that may have direct or indirect responsibility, involvement, or participation in the organization, promotion and/or sale of the Transaction(s), and include any parent/subsidiary, current or former employee, owner, officer, director, shareholder, partner, member, consultant, senior manager, manager, senior associate, associate, staff employee, independent contractor, agent, attorney, or other representative engaged in any activities (directly or through an agent) with respect to the Transaction(s) you are reporting, including but not limited to any of the following:

- Discovering, creating, investigating, or initiating the investment, devising the business or financial plans for the investment, or carrying out those plans through negotiations or transactions with others.
- Direct contact with a prospective purchaser of an interest, or with a representative or agent of a prospective purchaser, but only if the contact relates to the possible purchase of an interest in the potential tax shelter.
- Solicitation of investors using the mail, telephone, or other means, or by placing an advertisement for the potential tax shelter in a newspaper, magazine, or other publication or medium.
- Instructing or advising regarding the potential tax shelter or sales presentations.
- Cold calls.
- Preparation of any document for establishment of a tax shelter (e.g., articles of incorporation, a trust instrument, or a partnership agreement).
- Preparation of a tax or other legal opinion relating to the tax shelter.
- Preparation of promotional material.
- Preparation of a prospectus, offering memorandum, financial statement, or other statement describing the tax shelter.
- Sales pitches or other sales information to be presented to prospective targets or clients.

Other Parties to the Transaction(s)

Use a separate row for each party. "Party Name" may be a business name or an individual. Provide the SSN, EIN, or CCN if known or available to you. Provide the most recent address known or available to you. Provide telephone number if known or available to you.

SCHEDULE II - INFORMATION DOCUMENT REQUEST (IDR)

In responding to this IDR, you are required to make a diligent search of your records and documents and furnish all requested information and documents that are in your possession, custody or control, or to which you have the right of possession, custody or control. This includes information and documents in the possession of attorneys, accountants, affiliates, advisors, representatives, or other persons directly or indirectly employed by you, hired by you, or connected with you or your representatives, and anyone else otherwise subject to your control. In responding to the document requests, you are required to produce a document only one time. However, if a document has any change, notation, and/or modification, you are required to produce each version. Each non-identical copy is a separate document. In addition, you are required to produce generic documents that do not relate to any particular person. Further, you are required to make a reasonable inquiry and obtain readily ascertainable information.

Requests for information and documents should be construed expansively rather than narrowly. Thus, when searching for information and/or producing documents responsive to these requests and a choice may be made among narrow and broad interpretations, employ the broad interpretation for purposes of locating and producing information and documents. Any use of the singular includes the plural and vice versa.

Each IDR item should be separately answered and documents should be clearly identified as to the IDR item or items to which it is responsive using the number in the left column. If a document is responsive to more than one request, provide only one complete and legible copy and indicate all IDR items by number for which it is responsive. Remember to indicate on the face of Schedule II whether or not an item is attached.

Since participation in this Agreement is conditioned upon your cooperation with providing the requested information, you should not withhold information based upon the assertion of a privilege.

If you are unable to locate documents or records, then state with specificity the efforts you made to locate the documents or records and the reasons such documents or records are unavailable. If the requested records or documents do not exist, please state so. If the requested records or documents exist but are not available to you, state where such documents are located and provide the name, current address, and telephone number of the custodian. If you have disposed of any responsive documents, state when such document was disposed of, the reason for such disposition, and who, if anyone, may have possession of a copy of such document.

SCHEDULE III – ADDITIONAL TAX, PENALTY, AND INTEREST COMPUTATION

Line 1. Enter tax year(s) affected by the Transaction(s) included in the Agreement. Attach additional pages if needed.

Line 2. "Taxable Income as Reported or Previously Revised" is the amount you reported to FTB on an original or amended return for the taxable year, or the amount as previously adjusted by FTB. For apportioning taxpayers this is net income before state adjustments. If you received an NPA for the Transaction(s), as indicated in Paragraph 5.1 of the Agreement, use the beginning income amount on the NPA.

Line 3. "Increase due to BOB or ESOP Transactions" is the amount of BOB or ESOP tax benefits previously claimed on your tax return. This is the amount entered in Paragraph B.3. of the Agreement.

Lines 4 through 8. "Other Increases or Decreases" are amounts on the return that are affected by the removal of BOB or ESOP tax benefits previously claimed on your tax return.

Line 9a. "Revised Taxable Income" is your taxable income after adjustments for reversal of BOB or ESOP tax benefits previously claimed on your tax return.

Line 9b. "Apportioning Taxpayers" must submit a revised Schedule R, "Apportionment and Allocation of Income". After completion of Schedule R and its subschedules R-1 through R-7, transfer the net income (loss) for California purposes to line 9b of the Closing Agreement.

Line 10. "Revised Tax" is the amount of tax due on your "Revised Taxable Income."

Line 11. "Allowable Credits" are credits that may be applied against your "Revised Tax."

Line 12. "Other Taxes" include your revised alternative minimum tax (AMT), which must be recalculated based on your "Revised Taxable Income," and other taxes such as the Mental Health Services Tax and the tax on early distributions from a qualified retirement plan.

Line 13. "Total Tax Liability" is your "Revised Tax" minus "Allowable Credits" plus "Other Taxes." This is the amount entered in Paragraph 3 of the Agreement, in the "Total Tax Per Agreement" column.

Line 14. "Less: Tax Previously Assessed" is the amount of tax that was due for your "Taxable Income as Reported or Previously Revised." For Taxpayers who received an NPA for the Transaction, Tax Previously Assessed is shown on the NPA. For Taxpayers with no NPA, Tax Previously Assessed is the amount of tax shown on the original or amended tax return. This is the amount entered in paragraph 3 of the Agreement in the "Total Tax Per Return" column.

Line 15. "Additional Tax" is your "Total Tax Liability" minus "Less: Tax Previously Assessed." This is the amount entered in Paragraph 3 of the Agreement, in the "Additional Tax Per Agreement" column. For Taxpayers with NPAs, this amount should match the amount of the

"Additional Tax" on the NPA. If the amounts do not match, please attach a detailed written explanation of the differences.

Line 16. "20% Accuracy Related Penalty or 20% NEST". If you checked the box for Paragraph 5.1 of the Agreement, the 20% Non Economic Substance Transaction Penalty (NEST) applies and is calculated by multiplying the understatement amount (the amount of increase in taxable income due to the proper tax treatment minus the tax treatment shown on the return) by the highest applicable tax rate plus the amount of decrease in the aggregate amount of credits multiplied by 20 percent. If you checked the box for Paragraph 5.2 of the Agreement, the 20% Accuracy Related Penalty (ARP) applies and is determined by multiplying the "Additional Tax" (Line 15 above) by 20 percent. If you checked both paragraph 5.1 and paragraph 5.2 boxes, please call the FTB Notice 2008-4 Hotline at (916) 845-3030. This is the amount entered in Paragraph 5 of the Agreement in the "Penalty Amount" column.

Line 17. For "Interest calculated to _____," enter the date you expect your payment to be received by FTB. Interest on "Additional Tax Per Agreement" is charged from the original due date of the return. If you checked the box in 5.1 above, interest on the "Penalty Amount" is charged from the date of the Notice of Proposed Assessment. If you checked the box in 5.2 above, interest on the "Penalty Amount" is charged from the original due date of the return. Interest is calculated up to the date your payment is received by FTB. This is the amount entered in Paragraph 6 of the Agreement, in the "Interest Amount" column.

For help with the interest amount, or if you checked both the paragraph 5.1 and paragraph 5.2 boxes, you may call the FTB Notice 2008-4 at (916) 845-3030 for an interest computation.

Line 19. "Total Additional Tax, Penalty, and Interest" is "Additional Tax" plus 20% penalty plus "Interest calculated to _____."

Line 20. "All Years – Total Additional Tax, Penalty, and Interest" Add line 19 across and enter on this line. This is the total amount due.